

ISSUE:

The Official Filing Receipt in the subject application recognizes priority of co-pending priority International Application No. PCT/US02/02425 filed January 30, 2002 but does not recognize priority of co-pending Provisional Application No. 60/264,906 filed January 30, 2001.

Applicant respectfully petitions for recognition of proper priority benefit and that a corrected Official Filing Receipt be issued in accordance with the appropriate section of 37 C.F.R.

A second Preliminary Amendment claiming priority in accordance with the suggested language of Example 9 of the USPTO Notice *Benefit Claims to Prior Applications under 35 U.S.C. §§ 119(e), 120, 121, and 365(c)*, 1268 OG 89 (18 MAR. 2003) is filed concurrently herewith.

BACKGROUND:

The first sentence of the application as filed claimed priority of US Provisional Application No. 60/264,906. See Ex. 1.

The original Official Filing Receipt recognized priority benefit to the co-pending International Application but did not recognize priority benefit to the co-pending Provisional Application. See Ex. 2.

The published International Application No. PCT/US02/02425 properly recognized the priority benefit to the co-pending Provisional Application. See Ex. 3.

Applicant requested recognition of the priority benefit of the Provisional Application but was denied because "The application(s) to which priority is claimed were filed over a year prior to the filing date of this application. Therefore, the referenced application(s) cannot be claimed as domestic or foreign priority." See Ex. 4.

Applicant is entitled to priority because all applications have a chain of co-pendency.

RULE and ANALYSIS:

A. Priority of Provisional Patent Application

The rule for priority of provisional applications is provided in 37 C.F.R. § 1.78(a)(5)(i) as follows:

Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number).

Applicant's originally filed specification contained a reference to the provisional application number (consisting of series code and serial number). Applicant's provisional application was co-pending with Applicant's International Application, which itself has the effect under 35 U.S.C. § 363 as a regularly filed U.S. national application.

35 U.S.C. § 363

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

In addition to complying with the Rules of Practice in Patent Cases as set forth above, the Applicant has now amended the first line of the specification to be in full accord with the USPTO Notice *Benefit Claims to Prior Applications under 35 U.S.C. §§ 119(e), 120, 121, and 365(c)*. 1268 OG 89 (18 MAR. 2003).

Accordingly, the Applicant is entitled to priority benefit of the original Provisional Application No. 60/264,906.

B. Indication on Official Filing Receipt

The Applicant is entitled to have its claim for priority properly listed on the Official Filing Receipt.

M.P.E.P. § 503 provides:

. . . The filing receipt also includes other information about the application as applicable, such as **continuing data**, national stage data, foreign priority data, foreign filing license data, entity status information, and the date the Office anticipates publishing the application under 35 U.S.C. 122(b).

Applicant submits that recognition of the claim to priority of the co-pending Provisional Application is continuing data in accordance with M.P.E.P. § 503.

C. Applicant's Good Faith Reliance on Filing Receipt

The original Official Filing Receipt (Ex. 2) recognized priority of the co-pending International Application. Applicant relied in good faith that priority was proper. Applicant has diligently persisted to correct the Official Filing Receipt to recognize priority of the co-pending Provisional Application. Applicant has now diligently followed the USPTO Notice of suggested language in 1268 OG 89.

Applicant now respectfully petitions for recognition of the priority claim of the co-pending Provisional Application in accordance with the appropriate section of 37 C.F.R..

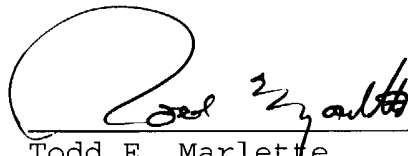
CONCLUSION

Accordingly, Applicant is entitled to priority of the co-pending Provisional Application and indication of same on a Corrected Official Filing Receipt.

A Petition fee of \$130.00 is enclosed herewith. It is not believed that any additional fee is required in connection with the filing of this Petition because the actions petitioned from are by the U.S. Patent and Trademark Office. However, if any further fees are required in connection with the filing of this Petition, kindly contact the undersigned as set forth below.

Respectfully submitted,

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TEM/sef



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PERISTALTIC MACHINE FOR DEPOSITING VISCOUS MATERIALS

RECEIVED

APR 14 2004

CROSS REFERENCE TO RELATED APPLICATIONS

OFFICE OF PETITIONS

The present application claims the priority benefit of co-
5 pending United States Provisional Application No. 60/264,906, and
co-pending International Application No. PCT/US02/02425.

BACKGROUND OF THE INVENTION

1. Field of the Invention

10 The present invention relates to the art of machines for
high speed depositing of viscous flowable food materials. More
particularly, the present invention relates to depositing
machines having a peristaltic device for depositing viscous
materials in repetitive singular quantities.

2. Description of the Related Art

15 Many prior devices have been developed for the
transportation and control of viscous flowable materials. For
example, Beshaw, et al., U.S. Patent No. 5,645,195 sets forth a
20 dough and batter dispenser having a hopper and rotatable valve
unit to dispense dough and batter in a controlled manner.
According to Beshaw, the dough maintains direct contact with a
number of intricate moving parts. The direct contact with moving
parts presents a significant burden, inter alia, for cleaning of
25 the machine and for maintaining sanitary conditions.



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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/629,158	07/29/2003	1722	375	JRAC-0001	6	20	3

CONFIRMATION NO. 5980

Todd E. Marlette, Esq.
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 13311 Clausen Rd.
 Trufant, MI 49347-9791

FILING RECEIPT



OC00000011101218

Date Mailed: 10/27/2003

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Joseph Anderson, Rockford, MI;

Domestic Priority data as claimed by applicant

Foreign Applications

UNITED STATES OF AMERICA PCT/US02/02425 01/30/2002

If Required, Foreign Filing License Granted: 10/24/2003

Projected Publication Date: 02/05/2004

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

Peristaltic machine for depositing viscous materials

Preliminary Class

(12) INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)

(19) World Intellectual Property Organization
International Bureau(43) International Publication Date
13 February 2003 (13.02.2003)

PCT

(10) International Publication Number
WO 03/011471 A1(51) International Patent Classification⁷: B05B 1/00, 1/08,
9/00, 15/02, A62C 13/62, B65D 25/40, 37/00, F04B 43/08

(21) International Application Number: PCT/US02/02425

(22) International Filing Date: 30 January 2002 (30.01.2002)

(25) Filing Language: English

(26) Publication Language: English

(30) Priority Data:
60/264,906 30 January 2001 (30.01.2001) US

(71) Applicant and

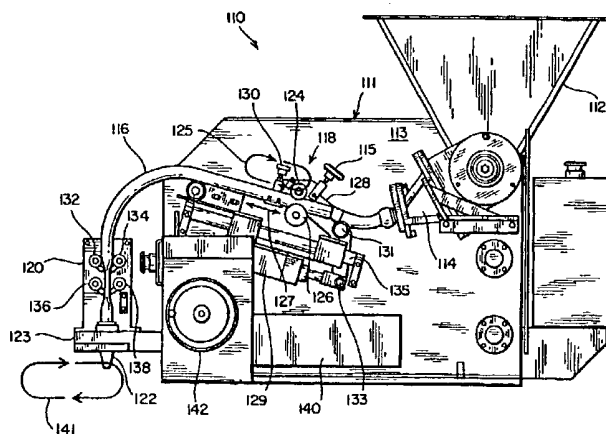
(72) Inventor: ANDERSON, Joseph, R. [US/US]; 10036
Belding RD., Rockford, MI 49341 (US).(74) Agent: MARLETTE, Todd, E.; Suite 200, 704 South
18th Street, Arlington, VA 22202 (US).(81) Designated States (national): AE, AG, AL, AM, AT, AU,
AZ, BA, BB, BG, BR, BY, BZ, CA, CH, CN, CO, CR, CU,CZ, DE, DK, DM, DZ, EC, EE, ES, FI, GB, GD, GE, GH,
GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC,
LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW,
MX, MZ, NO, NZ, OM, PH, PL, PT, RO, RU, SD, SE, SG,
SI, SK, SL, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ,
VN, YU, ZA, ZM, ZW.(84) Designated States (regional): ARIPO patent (GH, GM,
KE, LS, MW, MZ, SD, SL, SZ, TZ, UG, ZM, ZW),
Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM),
European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR,
GB, GR, IE, IT, LU, MC, NL, PT, SE, TR), OAPI patent
(BF, BJ, CF, CG, CI, CM, GA, GN, GQ, GW, ML, MR,
NE, SN, TD, TG).

Published:

— with international search report

For two-letter codes and other abbreviations, refer to the "Guidance Notes on Codes and Abbreviations" appearing at the beginning of each regular issue of the PCT Gazette.

(54) Title: PERISTALTIC MACHINE FOR DEPOSITING VISCOUS MATERIALS



(57) Abstract: A peristaltic depositing machine (150) includes a hopper (112) to store viscous material. A flexibly deformable tubing section (116) is connected to the hopper (112) for receiving the viscous material. A pair of rollers (124, 126) cooperate to compress tubing section (116) and thereafter move forwardly along the tubing section (116) such that the viscous material is forwardly propagated. A manifold (114) is connected between the hopper (112) and the tubing section (116) to transmit the viscous material there between. A flow control unit (120) is connected to a portion of the tubing section forward or the pair of rollers. The flow control unit (120) alternately constricts and unconstricts the portion of the tubing section (116) in synchronism with the forward movement by the pair of rollers (124, 126). A nozzle (122) is connected to an output end of said tubing section (116) to shape the viscous material upon output. A carriage (123) is also connected to an output end of the tubing section (116) and moves about a predetermined travel path (141) to thereby direct an output location of the viscous material.

WO 03/011471 A1

Ex. 4



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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/629,158	07/29/2003	Joseph Anderson	JRAC-0001

Todd E. Marlette, Esq.
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Baltimore, MD 21212

CONFIRMATION NO. 5980



OC000000011893344

Date Mailed: 02/12/2004

RESPONSE TO REQUEST FOR CORRECTED FILING RECEIPT

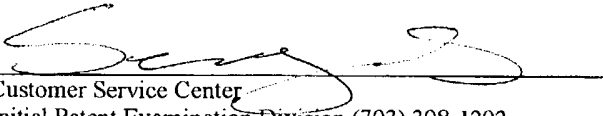
Domestic Continuity and Foreign Priority

In response to your request for a corrected Filing Receipt, the Office is unable to comply with the request because:

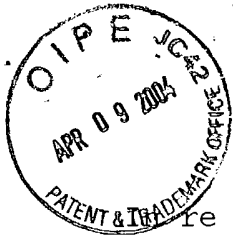
- ☐ The priority or continuity claim has not been entered because it was not filed during the required time period. Applicant may wish to consider filing a petition to accept an unintentionally delayed claim for priority. See 37 CFR 1.55 or 1.78.
- ☐ Continuity claimed under 35 U.S.C. § 120 cannot be added to the Filing Receipt without the applicant supplying the relationship (continuation, divisional, or continuation-in-part) in an Application Data Sheet or amendment to the first page of the specification.
- ☐ A claim for priority cannot be made based on an application filed after the application making the claim.
- ☐ Domestic benefit and foreign priority claims will not be captured in a provisional application. A provisional application is not entitled to a right of priority or to the benefit of an earlier filing date of any other application. See 35 U.S.C. § 111(b)(7) and 37 CFR 1.53(c)(4).
- ☐ A domestic continuity claim cannot be made to a foreign application and the filing receipt will only list the foreign country, application number, and filing date.
- ☐ Foreign priority will appear on the Filing Receipt in the following order: **Country, Application number, Filing date.**
- ☐ This application is the result of a conversion from a provisional application. Priority based on such application cannot be made since it no longer exists as a provisional application.
- ☒ The application(s) to which priority is claimed were filed over a year prior to the filing date of this application. Therefore, the referenced application(s) cannot be claimed as domestic or foreign priority.

60/264,906 1/30/01

- ☐ To change the benefit claim of a U.S. prior-filed application, applicant must amend the first sentence of the specification (if the benefit claim is referenced in the specification), or provide a supplemental application data sheet (ADS) (if the benefit claim was submitted in an ADS), with the desired benefit claim. Note that once a benefit claim is deleted, applicant will not be able to claim such prior-filed application again, if the above-identified application was filed on or after November 29, 2000.
- ☐ To change a foreign priority claim, applicant must submit a supplemental oath or declaration (if the priority claim is referenced in the oath or declaration), or a supplemental application data sheet (ADS) (if the priority claim was submitted in an ADS), with the desired priority claim. If a supplemental ADS is submitted, any deletions should be shown with strikeouts. Note that once a priority claim is deleted, applicant will not be able to claim such foreign application again, if the above-identified application was filed on or after November 29, 2000.


Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re Application of: :
Joseph, ANDERSON :
Serial No.: 10/629,158 : Art Unit: 1722
Filed: 07/29/2003 : Examiner: <unassigned>
For: PERISTALTIC MACHINE FOR : Atty Docket: JRAC-0001
DEPOSITING VISCOUS :
MATERIALS :

TRANSMITTAL LETTER

Commissioner for Patents
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Alexandria, VA 22313-1450

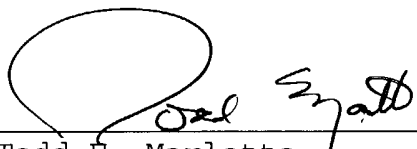
Sir:

Transmitted herewith are:

- ☒ Transmittal letter with 1 return receipt postcard
- ☒ PETITION TO CORRECT OFFICIAL FILING RECEIPT and/or
PETITION TO ACCORD PRIORITY BENEFIT
- ☒ SECOND PRELIMINARY AMENDMENT
- ☒ check # 1138 in the amount of \$130.00

Respectfully submitted,

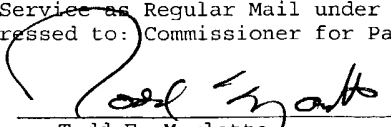
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Todd E. Marlette
Registration No. 35,269

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

Date of Deposit: April 7, 2004

I hereby certify that this Transmittal letter with 1 return receipt postcard, PETITION TO CORRECT OFFICIAL FILING RECEIPT and/or PETITION TO ACCORD PRIORITY BENEFIT, SECOND PRELIMINARY AMENDMENT, and check in the amount of \$130.00, are being deposited with the United States Postal Service as Regular Mail under 37 C.F.R. § 1.8 on the date shown above in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 
Todd E. Marlette